MOTION FILED

JUL 30 1981

No. 80-1934

IN THE

e Court of the United States

OCTOBER TERM, 1980

LIEN CHILDREN EDUCATION LITIGATION
STATE OF TEXAS AND TEXAS
DUCATION AGENCY *Appellants,*

v.

ITED STATES *Intervenor-Appellee.*

Appeal From The United States Court Of Appeals For The Fifth Circuit

ON OF THE NATIONAL SCHOOL OS ASSOCIATION TO FILE BRIEF and BRIEF AS AMICUS CURIAE SUPPORT OF APPELLANT

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ON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

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REN EDUCATION LITIGATION
TEXAS AND TEXAS
AGENCY *Appellants,*
v.
s *Intervenor-Appellee.*

n The United States Court
For The Fifth Circuit

ATIONAL SCHOOL BOARDS ON TO FILE BRIEF ICUS CURIAE

l Boards Association moves this icipate as *Amicus curiae* herein, g the attached brief.

pectfully submitted,

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1980

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States Court
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SCHOOL BOARDS
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Classes Of Children

Amicus has broade
decision below because i
noted. Although the c
constitutionality of a
documented and undocu
purpose of state fu
classifications which wou
decision were to stand.
the state of Florida this
(which was vetoed by
reasons) which would hav
tuition fee with certain e

The rationale of the
which may be unique to
other states as well. Wea
are sending their children
in Florida in order to ta
education in that state.
the children return to th
some undocumented alie
remain permanently aft
although the lower court
10% of those students. C
Florida seeks to charge
category and yet, their c
no less than those of the

Another classificati
residence and domicile

parents, like in the South America
take advantage of the educat
neighboring state. As long as the
state, according to the precedent o
district to which the child is sent co
or otherwise treat the child any
children of residents of the state.

States are forced to take unpo
those challenged here because the C
branch are failing in their duty.
caught up in a natural humanit
children who are the subject of
their plight is sad. However, th
system cannot cure all wrongs and
the totality of the issue. The
alleviate the problem is not by a
Constitutional protections which
burden of a solution on school dis
this problem is one for Congress,
the Department of State.

The Role Of The Federal

Civil Rights Protec

Title VI of the Civil Rights A
2000d, prohibits any federally f
from discriminating on the bas
national origin. In 1974 this court,
Nichols, 414 U.S. 563 (1974), aff
of Health, Education and Welf
imposed "affirmative" obligation
with significant numbers of lim
children in their schools. Thus,
obligated to, at the least, pro
training to these children.

Most of the undocumented alien children i
and in other states do not speak English. Thus, r
are school districts required to provide t
undocumented alien children the same educati
provide to other children in the district — th
provide more services. The unpublished
Remedies", formulated by the Department of
Education and Welfare in 1975, are now being u
guideline by the Department of Education
enforcement efforts under Title VI. The remedies
all limited English speaking children to be p
training in both English and their native langua

In the last Administration there was a
controversy over a proposed rule, 45 Fed. Reg
(Aug. 5, 1980), which was promulgated
Department of Education (withdrawn on Febr
1980 by Secretary Terrel Bell), with educators
that the expense of a full scale "transitional bil
program is prohibitive in cost and not educa
sound in a great number of situations. Now
districts are told that the class of children to who
services must be provided has been broadened to
children illegally residing in this country.

Undocumented alien children would also be
under this decision, to other special services
those required to be provided to handicapped
under Section 504 of the Rehabilitation Act of 1
U.S.C. 701 *et seq.* Nothing, apparently, would
the parents of a severely handicapped child from
to the United States and demanding a fu
residential program, which can run in excess of
per year for that child See *Hines* v. *Pitt County*
of Education, 497 F.Supp. 403 (E.D.N.C. 1980
alone would be incentive to cross our borders il

Privacy Act

The State of California, confronted, like Texas, with a great influx of undocumented alien children enrolling in its public schools, sought to deal with the problem by assisting the United States Immigration Service in its efforts to administer the federal immigration laws. The California state legislature passed a statute which required the Board of Supervisors of each county in the state to forward a list of names of non-citizen children without immigration status, to the United States Immigration Service, Calif. Educ. Code Section 6927. Subsequently, a decision in the case of *Maria de Lourdes P.* v. *Riles*, (case #C-121905), held that the California statute violated the Family Educational Rights Privacy Act of 1974, 20 U.S.C. 1232g(b)(1)(E). In response to this decision, Wilson Riles, California Superintendent of Public Instruction, issued a directive to local school districts prohibiting them from releasing the names as required in the California statute.

Thus, California is on the horns of a dilemma. On the one hand, they are told by federal courts that they must educate all children within their borders, even though the presence of the children is in violation of federal law. On the other hand, federal statutes prevent them from assisting the United States government in enforcing the immigration laws.

Federal Funding Of Education

Last year Congress passed the Refugee Act of 1980, 8 U.S.C. 1522(d)(1), which provides a limited amount of funding to school districts with large numbers of refugee children who have suddenly come into their districts. The act is very careful, however, to spell out which

children are eligible in the district to receive funding. Children who are fleeing their country for economic, educational or other reasons not related to the political climate in their country are not "refugees" under the Act. 8 U.S.C. Section 1101(a)(42). Immigrants from Viet Nam or Cuba are covered. Immigrants from Mexico, much of South America and Canada are not covered.

The United States Congress appears to have a mindset that if a child is here illegally the federal government will not provide any funding for that child for education or other services. But while the federal government is failing in its duty to either enforce the immigration laws or to deal with the problem of undocumented aliens through treaties or other agreements with their country of origin, state and local governments are being called upon to support these undocumented aliens.

Even under the Refugee Act of 1980, the Congress has appropriated monies which are hopelessly inadequate to cure the problem. For example, Dade County, Florida estimates that for school year 1980-1981, their Cuban/Haitian Entrant Program will increase the cost of educating children in the state by more than $3.4 million for direct supplementary instruction. This figure does not include instructional support, new buildings, school maintenance etc.

Public education is also getting hit on another front. Both Houses of Congress have passed legislation which would result in cuts in authorized ceilings over the next three years for the education of disadvantaged children and other important programs which could be used to educate undocumented aliens. (H.R. 3982, 97th Cong., 1st Sess.(1981); S. 1377, 97th Cong., 1st Sess.(1981). The legislation is now in the House-Senate Conference

This would result in "level" funding over
- that is, the dollar amount funded each year
in the same, probably resulting in a cut-back
of services. Given the President's budget
mitted to Congress in March of 1981, the
opriation picture for education is looking
bleak. The Administration proposal would
FY 1981 from the budget for education
om this base of 75% of the FY 1981 level,
would be given only a 7% increase for FY
eir most generous days, Congress has never
d sums at their fully authorized level. Even if
ess increases appropriations from that
ed by the President, the appropriation levels
ean devastating cuts in major educational

dditional programs which are of special
schools in attempting to meet the needs of
ed alien children are also slated for cuts.
al would cut the school lunch program by
5 billion. The House is proposing a 50% cut
for bilingual education. In the meantime,
rts continue to tell schools that they must
vices to thousands of additional children
s far exceed these of the average child.

CONCLUSION

ational School Boards Association, like the
exas and its school districts, has a primary
moting and improving the public education
is country. It is indeed disconcerting to be in
of arguing against the education interests of
dren such as those represented by the
erein. However, it is inherent in the nature of
system that hard decisions must be made as
s and priorities. Schools cannot right all the
society.

Cases like the one at bar must be decided on the basis of clear Constitutional principles. There exists no principle which prohibits a state from making a decision, based on sound fiscal rationale, that the state cannot take on the burden of educating the citizens of another country. Whether or not states are justified in charging undocumented alien children tuition is only the tip of the iceberg. There are several other closely intertwined issues which must be faced by this country: whether and how to enforce the immigration laws; whether a diplomatic solution to the problem of undocumented aliens should be sought; and what services, if any, should be provided to aliens entering the country illegally. The problem is national in scope and its solution involves policy decisions which must be made by the United States Congress and the President and his advisors. They are not decisions for the courts.

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